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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY RM DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

TAEK SANG YOON  
CDC #P-67861,  
  
Plaintiff,  
  
vs.  
  
A.B. GERVIN, et al.,  
  
Defendants.

Civil No. 06-2107 BEN (NLS)

**ORDER:**

- (1) DISMISSING CIVIL ACTION FOR FAILING TO PAY FILING FEE OR MOVE TO PROCEED *IN FORMA PAUPERIS* PURSUANT TO 28 U.S.C. § 1915(a); and**
- (2) DISMISSING CIVIL ACTION AS DUPLICATIVE PURSUANT TO 28 U.S.C. § 1915A(b)(1)**

Plaintiff, an inmate currently incarcerated at the California Rehabilitation Center in Norco, California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983.

**I. Failure to Pay Filing Fee or Request IFP Status**

Effective April 9, 2006, all parties instituting any civil action, suit or proceeding in a district court of the United States, other than a writ of habeas corpus, must pay a filing fee of \$350. See 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a). See *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

1 Here, Plaintiff has neither prepaid the \$350 filing fee required to commence this action,  
2 nor has he submitted a Motion to Proceed IFP. Therefore, this action is subject to immediate  
3 dismissal pursuant to 28 U.S.C. § 1914(a).

4 **II. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915A(b)**

5 The Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915A obligates the Court to  
6 review complaints filed by all persons “incarcerated or detained in any facility who is accused  
7 of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or  
8 conditions of parole, probation, pretrial release, or diversionary program,” “as soon as  
9 practicable after docketing” and regardless of whether the prisoner prepays filing fees or moves  
10 to proceed IFP. *See* 28 U.S.C. § 1915A(a), (c). The Court must sua sponte dismiss complaints,  
11 or any portions thereof, which are frivolous, malicious, or fail to state a claim upon which relief  
12 may be granted. 28 U.S.C. § 1915A(b); *Resnick v. Hayes*, 213 F.3d 443, 446-47 (9th Cir. 2000).

13 Plaintiff’s instant Complaint is subject to sua sponte dismissal pursuant to 28 U.S.C.  
14 § 1915A(b)(1) because it is duplicative of civil rights action he is already litigating. The  
15 Complaint filed by Plaintiff in *Sang v. Lopez, et al.*, S.D. Cal. Civil Case No. 06cv0459 W  
16 (BLM) contains identical claims against the same defendants named in this action. A court “may  
17 take notice of proceedings in other courts, both within and without the federal judicial system,  
18 if those proceedings have a direct relation to matters at issue.” *United States ex rel. Robinson*  
19 *Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

20 A complaint is considered frivolous under 28 U.S.C. § 1915A(b)(1) if it “merely repeats  
21 pending or previously litigated claims.” *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir.  
22 1995) (construing former 28 U.S.C. § 1915(d)) (citations and internal quotations omitted). Thus,  
23 because a review of the Court’s docket reveals that Plaintiff is already litigating the same claims  
24 presented in the instant action in *Sang v. Lopez, et al.*, S.D. Cal. Civil Case No. 06cv0459 W  
25 (BLM), the Court hereby **DISMISSES** Civil Case No. 06cv2107 BEN (NLS) pursuant to 28  
26 U.S.C. § 1915A(b)(1). *See Cato*, 70 F.3d at 1105 n.2; *Resnick*, 213 F.3d at 446 n.1.

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1 **III. Conclusion and Order**

2 For the reasons set forth above, the Court hereby:

3 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350  
4 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and


5 **IT IS FURTHER ORDERED** that:

6 (2) Plaintiff's Complaint in Civil Case No. 06cv2107 BEN (NLS) is **DISMISSED** as  
7 frivolous pursuant to 28 U.S.C. § 1915A(b)(1).

8 The Clerk shall close the file.

9 **IT IS SO ORDERED.**

10 **DATED:** 10/04/06

  
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**HON. ROGER T. BENITEZ**  
United States District Judge

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